

Embargoed until 10:30am 13 October 2005

Release of the NSW Ombudsman's 30th Annual Report

The NSW Ombudsman's 2004-2005 annual report was tabled in Parliament today.

The report details the work carried out across the broad range of areas within the Ombudsman's jurisdiction. Some of the highlights include:

- providing assistance and advice to more than 24,000 people who telephoned the office for help
- dealing with 10,714 formal complaints and notifications about the conduct of government and non-government agencies
- reporting to Parliament on the office's investigation into the Department of Community Services and NSW Police following the death of a child, and the office's audit of NSW Police's implementation of their *Aboriginal Strategic Direction (2003–2006)*
- providing to the relevant Ministers the final reports on five reviews of legislation that gave additional powers to police
- finalising 67 direct investigations
- reviewing the circumstances of 138 people living in care and the circumstances in which 212 children and people with a disability died during 2004
- closely monitoring 376 agency investigations into allegations that their employees had behaved in ways that may be abusive to children
- visiting 59 different regional towns throughout NSW
- coordinating over 2,700 visits by official community visitors to over 1,200 residential services
- delivering around 150 training sessions to 1,800 people working in public and community services.

The Ombudsman continues to play a key role in ensuring that a range of government and non-government organisations are accountable.

'In these times of uncertainty, the public puts its trust in the government to protect the security of the community and provide essential services in an effective way. My office plays a pivotal role in ensuring that government and a number of non-government organisations do this in an open and accountable way', the Ombudsman, Bruce Barbour said.

Police officers, correctional officers and transit officers providing security on trains are just some examples of public officials who are charged with important functions of protecting the safety and security of the community at large. **'The public has a right to expect all public officials who are given serious responsibilities and significant powers to exercise those powers carefully, reasonably and responsibly'**, said Mr Barbour.

In response to increasing complaints about the behaviour of transit officers, this year the Ombudsman closely examined a sample of 72 Railcorp investigations of complaints made to them directly by members of the public in 2003-04.

‘This year we investigated the quality of Railcorp’s investigations of complaints against its transit officers. The results were extremely disappointing. Although many of the complaints related to serious issues such as assault, use of excessive force and grossly inappropriate conduct, 53 (74%) of the investigations undertaken by RailCorp were critically deficient’, said Mr Barbour.

‘We found failures to pursue obvious lines of inquiry, to identify key issues, to contact the complainant or to check the complaint history of officers involved. We identified a need for system changes and legislative clarification of officers’ powers. Our main recommendation was for more rigorous and systematic external oversight of investigations. Railcorp has responded positively’, Mr Barbour said.

‘Police complaints continue to identify serious misconduct by police officers, both on and off duty. 81 officers were charged with 155 offences in the past year, including charges for assaults, drink driving and domestic violence’, said Mr Barbour.

‘Police commanders have generally dealt with complaints well. Some complaints, however, were mismanaged or poorly investigated, resulting in unfairness to members of the public and police officers. Police commanders have remedied most of these errors on our insistence’, said Mr Barbour.

Schools and other government and non-government organisations employing people who work with children have an important responsibility to protect the children in their care from inappropriate behaviour of their employees.

‘If serious allegations are made against an employee, risks that they may pose to children need to be managed while the case is investigated’ said Bruce Barbour, Ombudsman.

In some cases, even when employees have been charged with serious criminal offences such as aggravated sexual assault, their bail conditions may not restrict their access to children in the workplace.

‘We monitor these matters carefully and intervene quickly when risks are identified’, Mr Barbour said. **‘There have been a number of cases where we have acted to address risk to children, where the employees have later been convicted of criminal offences.’**

Other titles included in the media kit for the release of the annual report are:

1. Police
2. Public services
3. Community services – child protection and out-of-home care
4. Community services – disability services
5. Workplace child protection
6. Freedom of information
7. The corrections system
8. Regional and suburban references

The media kit will be available on our website at www.ombo.nsw.gov.au after 10:30am today.

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NSW Ombudsman's 2004-2005 Annual Report

Police

Snapshot 2004-2005

- 4,179 written complaints against police made or notified to the Ombudsman – up 17%
- 1,215 written complaints made by police officers – up 27%
- 2,440 police investigations oversights by the Ombudsman – up 45%
- 165 deficient investigations identified by Ombudsman
- 155 criminal charges against 81 police officers – 78% after complaints by other police officers
- 960 complaints where action taken – including counselling and performance agreements
- 5 reports on new police powers completed and provided to Ministers

'Police complaints continue to identify serious misconduct by police officers, both on and off duty. 81 officers were charged with 155 offences in the past year, including charges for assaults, drink driving and domestic violence', said Ombudsman Bruce Barbour, tabling his 2004-2005 annual report.

Police complaints have increased by almost 17% this year, to 4,167. While many complaints raised only minor issues or could be conciliated, 2,440 serious matters were investigated by police and reviewed by Ombudsman officers. 1,215 complaints were made by police officers, up from 621 in 2001-2002. 63 officers were charged after complaints made by other police.

'Police commanders have generally dealt with complaints well. Some complaints, however, were mismanaged or poorly investigated, resulting in unfairness to members of the public and police officers. Police commanders have remedied most of these errors on our insistence', said Mr Barbour.

The Ombudsman's efforts to speed up how police handle complaints are yielding results. Commanders have been required to explain delays in 170 matters, and pushed to complete complaint investigations. Complaints where commanders did not act have reduced by almost two-thirds in the last 3 years.

'We have continued to focus on how police deal with vulnerable people. Our year-long review of how police are implementing the Young Offenders Act made 28 recommendations to improve the work of police and criminal justice outcomes for young people', Mr Barbour said.

The Ombudsman annual report also highlights successes following detailed audits of how police are dealing with Aboriginal communities. **'It is particularly pleasing to see Aboriginal communities and police work together to tackle crime and disorder'**, said the Ombudsman.

Embargoed until 10:30am 13 October 2005

NSW Ombudsman's 2004-2005 Annual Report

Public services

Formal complaints about NSW public services rose by 5.4% this year, from 3,373 in 2003-2004 to 3,554 in 2004-2005, the NSW Ombudsman, Mr Bruce Barbour, disclosed in his 2004-2005 annual report tabled today.

Poor complaint-handling and customer service (including failure to reply to correspondence, delays and inconsistent treatment), enforcement and disputes about charges and fees continue to be major concerns. Overall complaints in these categories make up 57% of the total. Land tax and fines prompted a number of complaints about enforcement issues.

'Complaints about transit officers prompted my office to investigate how Railcorp deals with complaints to it about these officers', Mr Barbour said. 'Our examination of a sample of 72 Railcorp investigations of complaints to it in 2003-04, found that 53 (74%) were deficient.'

'We found failures to pursue obvious lines of inquiry, to identify key issues, to contact the complainant or to check the complaint history of officers involved. We identified a need for system changes and legislative clarification of officers' powers. Our main recommendation was for more rigorous and systematic external oversight of investigations. Railcorp has responded positively', Mr Barbour said.

This year the office examined in detail the complaint-handling procedures across all 10 NSW public universities. The Ombudsman anticipates that he will soon be able to issue a minimum standards complaint-handling system that all universities can adopt.

Annual report references:

- Railcorp Transit Officers: pages 69-72
- Fine enforcement/Infringement Processing Bureau: page 75
- Universities: pages 72-73 and case study 72, page 137
- Land valuations: page 72
- Payroll tax/Office of State Revenue: case study 18, page 67
- Licence cancellation/NSW Maritime Authority: case study 22, page 68

Embargoed until 10:30am 13 October 2005

NSW Ombudsman's 2004-2005 Annual Report

Community services – child protection and out-of-home care

'My office continues to have concerns about the delivery of community services for children, young people and families by the Department of Community Services (DoCS) and non government service providers', said the Ombudsman, Mr Bruce Barbour on tabling his 2004-05 annual report today.

The annual report reveals that issues regarding the child protection system made up most of the community service complaints the Ombudsman received last year. **'Of particular concern were complaints about the adequacy of DoCS' response to reports of risk of harm to children, particularly the adequacy of DoCS' assessment of the risks facing children'** Mr Barbour said.

The report reveals that the Ombudsman initiated 19 investigations about the child protection system last year. The Ombudsman has identified significant challenges facing the child protection system. In particular, we have concerns about:

- DoCS' practice for managing workloads that allows for cases to be closed at any time if demand can't be met. This can result in children at risk of abuse receiving no DoCS intervention.
- the adequacy of DoCS' response to reports about unborn children who are at risk of abuse. In cases we reviewed, DoCS did not make adequate plans for protecting the children after their birth.
- DoCS relying on informal 'undertakings' made by parents as a strategy for protecting children. We found that these undertakings often fail to provide any real protection.
- inadequate interagency work between DoCS and other agencies. We have identified problems with information exchange, liaison and collaboration on child protection issues.

'We have also seen continuing problems with efforts to effectively support Aboriginal families and protect Aboriginal children and young people' said Mr Barbour.

The annual report includes cases where the Ombudsman reviewed the situation of children and young people placed in the care of non-government agencies.

'This year we focused our review work on the circumstances of children and young people in out-of-home care who have additional needs because of their disability. We remain concerned about significant problems in finding secure, family-based placements for these children. There is also room for improvement in how young people with disabilities are supported when they leave care' said Mr Barbour.

Annual report references

- For examples of investigations into child protection system, see page 82 (case studies 34 and 35).
- For examples of reviews of the situation of children and young people in out-of-home care, see page 83 (case studies 36 and 37).

Embargoed until 10:30am 13 October 2005

NSW Ombudsman's 2004-2005 Annual Report

Community services – disability services

In his 2004-05 annual report tabled today, the Ombudsman, Mr Bruce Barbour said that the Department of Ageing, Disability and Home Care's (DADHC) monitoring and reviewing of disability services continues to be a priority for his office.

The Ombudsman's report reveals that accommodation services were the most complained about area of the disability service system this year. Complaints were about:

- the use of temporary staff and concerns about the adequacy of training and support for staff to provide proper care for residents
- the way agencies deal with incompatibility between residents and respond to residents' behaviour
- changes in accommodation arrangements and the management of vacancies in group homes, particularly a lack of consultation with residents and their families
- deficiencies in agencies' practices for responding to and supporting the individual needs of residents.

'My office has identified that poor documentation and implementation of plans to meet people's individual needs, in particular their health needs, can significantly impact on residents. It can result in people being inadequately supported to maintain good health, and in some cases, contribute to preventable deaths' said Mr Barbour.

Failings in DADHC's systems for handling serious allegations against its staff are highlighted in one Ombudsman investigation. **'People who live in accommodation services can be vulnerable to abuse and neglect as a result of their disabilities. It is critical to their safety and wellbeing that services have robust systems in place for responding to allegations of abuse and neglect, and for screening all their employees, including contractors and casual staff'** said Mr Barbour.

Another Ombudsman investigation highlighted problems with DADHC's administration of funds for providing aids and appliances to residents of its accommodation services.

The Ombudsman's work during the year has shown that access to a range of disability support services, including accommodation, respite and in-home care, remains a critical issue. **'Unmet need for disability support in the community is high and increasing, and resources for meeting even current levels of need are limited. In this environment it is critical that DADHC strengthen its systems for ensuring fair and equitable access to services, and for ensuring that decisions about access to services are prompt and transparent'** said Mr Barbour.

Mr Barbour also referred to an Ombudsman investigation into DADHC's role in leading the development of a whole-of-government approach for people with an intellectual disability who come into contact with the criminal justice system. **'This is a critical issue given that people with an intellectual disability make up a significant proportion of people in custody in NSW. My office's investigation into this issue found that DADHC failed to adequately promote cross-government progress in this area. The slow pace of progress since our investigation remains a concern. We will continue to monitor this issue closely'**.

This year the Ombudsman issued a report to DADHC about its lack of progress in implementing an effective system for monitoring and supporting the quality of the services it provides and funds. **'Monitoring the quality of disability services is important for ensuring their compliance with relevant legislation and standards and an essential safeguard for the rights and welfare of people who use those services. DADHC's work this year to roll out a new monitoring system for the services it funds is important progress. However, much work remains before a reliable system is fully operational across all DADHC funded and operated services. My office will continue to monitor this important issue closely'** said Mr Barbour.

The Ombudsman highlighted inadequacies in services to families caring for children with a disability in a special report to Parliament last year. This year, Mr Barbour's office monitored DADHC's implementation of a detailed action plan put in place to address the problems identified in the report. **'DADHC has made improvements in a number of important areas. However, some aspects of the action plan are not yet fully implemented, in particular, the establishment of new services to provide support to families, and alternative family based placements for children who cannot remain living at home, for whatever reason. This remains a significant challenge for DADHC and the community services sector'** said Mr Barbour.

Annual report references

- the management of accommodation vacancies, see page 86 (case study 38).
- individual and health care planning, see page 89.
- responding to allegations of assault, see page 88.
- management of aids and equipments, see page 88.
- people with a disability and the criminal justice system, see page 87.
- monitoring of service compliance with disability standards, see page 89.
- services for children and young people with a disability, see page 88

Embargoed until 10:30am 13 October 2005

NSW Ombudsman's 2004-2005 Annual Report

Workplace child protection

The NSW Ombudsman's 2004-2005 annual report tabled today reveals that 18% of the 1,815 notifications made to the Ombudsman about workplace child protection concerned alleged sexual offences or sexual misconduct by NSW employees against children, including alleged child sexual assault and possession of child pornography.

'If serious allegations are made against an employee, risks that they may pose to children need to be managed appropriately while the case is investigated' said Bruce Barbour, Ombudsman.

In some cases, even when employees have been charged with serious criminal offences such as aggravated sexual assault, their bail conditions may not restrict their access to children in the workplace.

'We monitor these matters carefully and intervene quickly when risks are identified', Mr Barbour said. **'There have been a number of cases where we have acted to address risk to children, where the employees have later been convicted of criminal offences'**.

In one case an independent school decided not to suspend a piano teacher or move him to alternate duties, even though he had been criminally charged with 30 child sexual offences. It was only when we investigated this decision that the school accepted our recommendation to stand the teacher down. This teacher has now been convicted and sentenced to eight years in custody. **'Our involvement ensured that appropriate action was taken to protect students from possible further abuse while the criminal trial was underway'** Mr Barbour said.

The Ombudsman also considers whether employees have been dealt with fairly during child protection investigations.

'Investigations can impact on people's lives. The decisions that employers make must be fair and based on evidence', said Mr Barbour. **'My office takes a balanced approach. We look at risk to children but we also consider whether employees have been given enough information to respond to the allegations before a final decision is made'**.

The Ombudsman's child protection jurisdiction extends to over 7000 government and non-government agencies in NSW. **'We help agencies obtain the skills they need to respond to reportable allegations appropriately, so that they can protect children who use their services and conduct fair and thorough investigations'**, Mr Barbour said.

Annual report references:

- For statistical information about notifications, see page 140 and page 141.
- For case studies on child sexual assault, see page 144 (case study 75) and page 145 (case study 76)
- For case studies on procedural fairness for employees, see page 153 (case studies 83, 84 and 85).
- For information about the Ombudsman's training and audit work with agencies, see page 147 and page 149.

Embargoed until 10:30am 13 October 2005

NSW Ombudsman's 2004-2005 Annual Report

Freedom of information

The Ombudsman's annual report tabled in Parliament today noted a significant increase in the number of FOI applications made to agencies by members of the public but said there was a very noticeable increase in agencies refusing to give access to the documents requested.

'There has been a significant and disturbing downward trend in the percentage of applications where all documents requested were released in full. In 1995-96, 81% of decisions were to release documents in full but by 2001-02 this had decreased to only 63%. It has stayed around that level ever since', Mr Barbour said.

The Ombudsman, Bruce Barbour, also reported a significant increase in the number of FOI complaints from journalists and Members of Parliament. Complaints from the media have increased threefold over the last three years.

The Ombudsman again drew attention to the practical problems that agencies face in trying to comply with a number of inconsistent laws governing access to information. He noted that despite continuing confusion and repeated calls by the Ombudsman since 1998-99 for appropriate action to be taken, the NSW government has yet to address this issue.

Cabinet confidentiality

The Ombudsman also reported a marked increase in agencies claiming cabinet confidentiality as a reason for refusing to give FOI applicants access to documents.

Mr Barbour said **'We are concerned that agencies may be inappropriately classifying documents in this way to avoid releasing them to the public.'**

One case reported involved a Member of Parliament who applied to the Department of Infrastructure, Planning and Natural Resources for a document about contamination of land on a former rifle range. The Department claimed the document, actually an email replete with colloquial terms, was a Cabinet document. The Department decided to release the email to the MP following the Ombudsman's investigation.

Misuse of legal professional privilege

The Ombudsman's report also expressed concern that agencies wrongly withhold documents because they believe the material is subject to legal professional privilege when

this is indeed not the case. One case reported involved the Department of Environment and Conservation claiming legal professional privilege over nearly all documents about a proposal to film a movie in a wilderness area of a national park.

The Ombudsman said the public interest in this case called for all the documents to be released.

Improper use of exemption clauses

‘Agencies are continuing to use inappropriate exemption clauses to withhold documents from members of the public’, said Mr Barbour.

Agencies must consider whether the public interest would be served by the release of documents even when an exemption clause may apply. An underlying principal in the legislation is that documents should be released unless there is a good reason why they should remain exempt.

The Ombudsman was critical of agencies that failed to give reasons for exempting documents. **‘This approach can sometimes reflect the underlying motivation of the decision-maker to protect the agency or the government from public scrutiny or possible embarrassment. The proper operation of the FOI Act requires decision-makers to exercise their statutory discretion in accordance with the Act – not in accordance with political imperatives.’** Mr Barbour said.

Annual report references

- For details about media complaints about FOI, see case studies 64, 65 and 66 on page 125.
- For details of the case study involving claims of cabinet confidentiality, see case study 70 on page 130.
- Inappropriate use of exemption clauses is discussed on page 128 of the Annual Report.

Embargoed until 10:30am 13 October 2005

NSW Ombudsman's 2004-2005 Annual Report

The corrections system

As the number of inmates in NSW prisons grows, so do the complaints to the Ombudsman about the correctional system. The Ombudsman received nearly 4,000 complaints from inmates and juvenile offenders during the year. Formal complaints increased by a third over the previous year. Staff of the Ombudsman spent 138 person days visiting and inspecting 26 correctional centres in addition to visiting every juvenile justice centre at least twice.

'We aim to improve the administration of correctional centres and promote more humane conditions for people in custody' Mr Barbour said.

The Ombudsman's annual report details a number of cases where inmates were not treated fairly or in accordance with the law or current policies. These include inmates being assaulted, illegally segregated, denied access to legal calls while confined to cells, and having their mail inappropriately withheld. **'Treating inmates consistently, reasonably and within the law and being accountable for the management of their behaviour is essential to the effectiveness of the correctional system.'** Mr Barbour said.

A long overdue re-development of Mulawa women's prison posed practical problems for housing its inmates in mid-2004. Closure of some units led to women sleeping on mattresses on cell floors, under benches next to the toilet and shower they shared with their cell mate. Overruns in the overtime budget compounded the problem by forcing extended lock ins under these conditions. When the Ombudsman raised these concerns with the Department's Senior Assistant Commissioner, he extended the overtime budget and re-opened a unit to ease the overcrowding and lockdowns.

135 inmates asked to see the Ombudsman's staff when they visited Long Bay Hospital 2 in January 2005. Lock ins were affecting inmate access to welfare, programs and importantly, as the centre purpose is to provide medical services to inmates, to the clinic. A visit to the segregation area found inmates who claimed they had not been let out of their cells for showers, exercise or phone calls for 9 days. Centre staff confirmed the inmates were only given access that day because the Ombudsman was visiting. As result of the Ombudsman's concerns, the Commissioner directed a formal inquiry into the administration of the centre.

The Ombudsman's report detailed results of a number of system reviews as well as details of individual complaints. One involved reviewing the implementation of the Department's policy on videotaping all uses of force. **'Video recording is a powerful accountability tool'**, said the Ombudsman. **'It helps to ensure officers conduct themselves professionally and discourages inmates from making vexatious complaints'**.

The Ombudsman found only 38% of events were taped over a 6 month period even though the Department's policy requires all events to be videotaped except in exceptional circumstances. 13 correctional centres did not tape any events where force was used. The Ombudsman was especially critical of the low use of video by specialist units in the department. **'You would expect these units to be the most prepared and the most professional in carrying out this difficult type of work,'** said the Ombudsman.

Juvenile justice

The Ombudsman called on staff at juvenile justice centres to work together more cooperatively and to avoid conflict. One case study reported how a staff member made serious allegations against colleagues that were completely erroneous. Hostility and mistrust between some staff at this juvenile justice centre led to rumours about disliked colleagues being repeated as known fact despite there being no evidence to support them. **'Tension among staff led to a costly and unnecessary investigation by the Department'**, said Mr Barbour.

The Ombudsman's annual report noted positive changes to the former Kariiong Juvenile Justice Centre following its takeover by the Department of Corrective Services. **'The overall impression we have from our visits is that the centre is running smoothly, is cleaner and the atmosphere is calmer'**, said Mr Barbour. **'Detainees have commented to us that correctional staff are consistent and fair. Having clear cut rules seems to be working'**.

Annual report references:

- Case studies about the High Risk Management Unit start on page 111, (case study 54, 55,56 and 57).
- For the case study about conditions at Mulawa Correctional Centre, see page 113.
- For the case study about conditions at Long Bay Hospital 2, see page 115.
- References to Kariiong Juvenile Correctional Centre are found on pages 110 and 119.
- Case studies on juvenile justice centre culture are on page 119.

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Embargoed until 10:30am 13 October 2005

NSW Ombudsman's 2004-2005 Annual Report

Regional and suburban references

Bathurst Correctional Centre		P115
Byron Shire Council	Case study 20	P67
Cessnock Correctional Centre	Case study 52	P108
City of Sydney Council	Case study 65	P125
Dareton	Case study 16	P57
Dungog Shire Council	Case study 68	P127
Emu Plains Correctional Centre	Case study 61	P118
Gosford City Council	Case study 47	P101
Goulburn Correctional Centre		P114
Gwydir Shire Council	Case study 45	P101
Harden Shire Council	Case study 44	P101
Junee Correctional Centre	Case study 50	P108
Kariong Juvenile Justice Centre		P119
Kariong Juvenile Justice Centre		P110
Long Bay Hospital	Case study 49	P108
Long Bay Hospital		P115
Metropolitan special Programs Centre		P114
Mulawa Correctional Centre		P113
Mulawa Correctional Centre	Case study 58	P114
Mulawa Correctional Centre	Case study 59	P114
Palerang Council	Case study 42	P100
Parramatta City Council	Case study 45	P101
Penrith City Council	Case study 67	P126
Sutherland Shire Council		P105
UNSW	Case study 72	P136
University of Sydney	Case study 26	P73
Walgett	Case study 17	P57
Windsor	Case Study 30	P75
Wollongong Shire Council	Case study 43	P100